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ENRIQUE ACOSTA DELGADO

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

13 ENRIQUE ACOSTA DELGADO, ) NO. Civ. F 99-6547 AWI LJO  
14 )  
15 Petitioner, ) ) **STIPULATION AND ORDER DISMISSING**  
16 v. ) ) **CASE**  
17 Immigration and Naturalization ) )  
18 Service, ) )  
19 Respondents. ) )

Petitioner Enrique Acosta Delgado's petition for a writ of habeas corpus challenges his indefinite detention by the Bureau of Immigration and Customs Enforcement (BICE), formerly the Immigration and Naturalization Service. Mr. Delgado is no longer being detained by the BICE, and thus Petitioner and Respondent, through their respective attorneys, hereby stipulate and agree that, because Petitioner is no longer being detained by Respondent, this petition should be dismissed as moot. Pursuant to 28 U.S.C. Section 636(c), the parties consent to the magistrate judge

1 entering a final order dismissing this case.

2 Counsel for Respondent, Attorney Gregory G. Mack, has  
3 authorized the undersigned to sign this stipulation electronically  
4 on his behalf.

5  
6 Respectfully submitted,

7  
8 Dated: December 6, 2005

Dated: December 6, 2005

9 QUIN DENVER  
10 Federal Defender

11 /s/ Gregory D. Mack  
12 GREGORY D. MACK  
U.S. Department of Justice  
Civil Division  
Office of Immigration  
Litigation

13  
14 Attorney for Respondents  
15 IMMIGRATION AND NATURALIZATION  
16 SERVICE

17  
18 /s/ Carolyn M. Wiggin  
19 CAROLYN M. WIGGIN  
Assistant Federal Defender

20 Attorney for Petitioner  
21 ENRIQUE ACOSTA DELGADO

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28 **ORDER**

Rule 41(a)(1), in relevant part, reads:

an action may be dismissed by the plaintiff without order  
of court (i) by filing a notice of dismissal at any time  
before service by the adverse party of an answer or of a  
motion for summary judgment, whichever first occurs, or  
(ii) by filing a stipulation of dismissal signed by all  
parties who have appeared in the action. Unless otherwise  
stated in the notice of dismissal or stipulation, the  
dismissal is without prejudice, except that a notice of  
dismissal operates as an adjudication upon the merits  
when filed by a plaintiff who has once dismissed in any  
court of the United States or of any state an action  
based on or including the same claim.

Rule 41(a)(1)(ii) thus allows the parties to dismiss an action

1 voluntarily, after service of an answer, by filing a written  
2 stipulation to dismiss signed by all of the parties who have  
3 appeared, although an oral stipulation in open court will also  
4 suffice. Carter v. Beverly Hills Sav. & Loan Asso., 884 F.2d 1186,  
5 1191 (9th Cir. 1989); Eitel v. McCool, 782 F.2d 1470, 1472-73 (9th  
6 Cir. 1986). Once the stipulation between the parties who have  
7 appeared is properly filed or made in open court, no order of the  
8 court is necessary to effectuate dismissal. Fed. R. Civ. Pro.  
9 41(a)(1)(ii); Eitel, 782 F.2d at 1473 n.4. Because Petitioner has  
10 filed a stipulation for dismissal with prejudice as to all parties  
11 under Rule 41(a)(1)(ii) that is signed by all parties who have made  
12 an appearance, this case has terminated. See Fed. R. Civ. Pro.  
13 41(a)(1)(ii); In re Wolf, 842 F.2d at 466; Gardiner, 747 F.2d at  
14 1189; see also Gambale, 377 F.3d at 139; Commercial Space Mgmt, 193  
15 F.3d at 1077; cf. Wilson, 111 F.3d at 692.

16 Therefore, IT IS HEREBY ORDERED that the Clerk of the Court is  
17 DIRECTED to close this case in light of Petitioner's filed and  
18 properly signed Rule 41(a)(1)(ii) Stipulation For Dismissal With  
19 Prejudice.

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21 IT IS SO ORDERED.

22 Dated: December 19, 2005  
0m8i78

/s/ Anthony W. Ishii  
UNITED STATES DISTRICT JUDGE

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